LEGISLATIVE LIBRARY OF BRITISH COLUMBIA
3 3298 00261 8628

Report

&

Recommendations

of the

2001 Judicial Compensation Committee

April 30, 2001

JUDICIAL COMPENSATION COMMITTEE
for the
Province of British Columbia

April 30, 2001

The Honourable Graeme Bowbrick
Attorney General
Room 232
Parliament Buildings
Victoria, B. C.
V8V 1X4

Dear Mr. Minister,

In accordance with your letter of January 10, 2001, I hereby submit, on behalf of the Judicial Compensation Committee, our Report and Recommendations relating to the process for establishing remuneration levels.

Yours sincerely,

C. J. Connaghan
Chair

5649 Blenheim St.
Vancouver, B. C. V6N 1P7

phone 604 261-7335
fax 604 264-7883
email [illegible]

Report & Recommendations of the 2001 Judicial Compensation Committee

Contents

	Page
Executive Summary	1
Introduction	5
Section	
1. **Mandate & Members of the 2001 Judicial Compensation Committee**	7
2. **The Provincial Court**	9
Scope of the I Court	9
The "People's Court"	9
Innovation and Productivity	10
Mediation	11
Caseload Management	11
3. **The Importance of Judicial Independence**	13
4. **History of Determining Judicial Compensation in British Columbia**	15
1992 Recommendations on Process	15
Court Petitioned	16
Non-Adversarial Environment	17
5. **The 2001 Judicial Compensation Committee Process**	19

Contents - 2 **Page**

6. **Determining Judicial Compensation** 21

The laws of British Columbia 21
The need to attract a strong court by attracting qualified applicants 21
The current financial position of the government 22
The need to provide reasonable compensation to the judges 23
The work judges do 24
Experience and education 24
History of remuneration in B.C. Provincial Court 25
Remuneration of Judges in other courts 25
Other salary levels and general economic indicators 26
Any other matter the Committee considers relevant 26

7. **Pension Considerations** 27

Public Service Pension Plan 27
Special Provisions for Judges 28
Judges' Proposals 28
Actuarial Evaluation 29
Assessment of Judges' Pension Provisions 29
Pension Recommendations 30
Other Pension Considerations 31

8. **Salary Recommendations** 33

9. **Benefits and Allowances Recommendations** 35

10. **Supernumerary Judges Proposal** 37

11. **Reimbursement of Expenses** 37

12. **Judiciary Injury Reimbursement Program** 39

13. **Summary of Recommendations** 41

Acknowledgments

Appendices:

A Western Compensation & Benefits Consultants Letter

B. Supernumerary Judges Proposal
C. Charts and Graphs
D. Judiciary Injury Reimbursement Program Agreement

Executive Summary

The 2001 Judicial Compensation Committee was appointed in January by the Attorney General of British Columbia to review and make recommendations with respect to pay, pensions and benefits for Provincial Court Judges. The appointment, under the Provincial Court Act, is part of a process designed to help ensure judicial independence, widely acknowledged as the foundation of our justice system.

After months of study, analysis and deliberation, the Compensation Committee has concluded that British Columbia has a strong and innovative Provincial Court judiciary, whose members are working hard so that the Provincial Court system is equitable, efficient, and effective.

In presenting its report, the 2001 Judicial Compensation Committee extends its thanks to all who participated in and contributed to the process. Members of the Committee are especially appreciative of the help received from the Provincial Court Judges Association of British Columbia and the Government of British Columbia and for the constructive, non-adversarial way in which both key parties worked with the Compensation Committee. This contributed significantly to the Compensation Committee's ability to get its job done efficiently and in a timely manner.

The 2001 Judicial Compensation Committee makes its salary, pension and benefits recommendations based upon examination of the total compensation provided for Provincial Court Judges. This Compensation Committee devoted considerable attention to long-outstanding issues related to pensions for the Judges and makes specific recommendations directed to a resolution of those issues.

In summary, the 2001 Judicial Compensation Committee, recommends:

1. Salary

The 2001 Judicial Compensation Committee makes the following salary recommendations to compensate Provincial Court Judges for the valuable work they do and the productivity improvements they have helped to deliver in recent years; to encourage continued work to that end; to achieve comparability with similar jurisdictions in other provinces, and to address the need for a "catch up" resulting from the lingering impact of a five-year period from 1993 through 1997 when the salary level remained static:

January 1, 2001	--	$155,000
January 1, 2002	--	$158,000
January 1, 2003	--	$161,250

2. Pension

In order to provide Provincial Court Judges in British Columbia with pensions comparable to those of Judges in other Provincial Courts, the Compensation Committee recommends:

a) For Judges retiring or terminating service as a Judge after January 1, 2001, the normal form of pension for a Judge with a spouse at the time of retirement be a joint life and 60% survivor pension and for a Judge with no spouse, life pension with a 10-year guarantee. If a spouse is more than 10 years younger than the Judge, the amount of the pension should be actuarially adjusted.

b) For service as a Judge after January 1, 2001, the pension accrual rate be 3% per year without Canada Pension Plan offset and the Judges' contribution rate be 7% of their full salary.

c) Judges be allowed to accrue a pension of up to 70% of best three-year average salary, with those Judges who have accrued less than this 70% maximum but have ceased contributing having the option of resuming contributions effective January 1, 2001 and continuing to contribute until they have reached the 70% maximum.

3. Benefits and Allowances

The Compensation Committee recommends that Benefits and Allowances for Provincial Court Judges in British Columbia remain unchanged except with regard to long-term disability benefits, where the following is recommended:

- That the level of long-term disability benefit for Judges be increased to 70% of salary, payable until age 65, compared with current provisions that effectively amount to 53.8% of salary.

4. Supernumerary Judges Proposal

The 2001 Compensation Committee endorses the provisions of the joint proposal from the Judges and the Government for a retired Judges' election to work part time (contained in Schedule 1) to the extent that those provisions relate to judicial remuneration, allowances and benefits.

The Compensation Committee recommends that the per diem rate for ad hoc Judges and for part-time retired Judges where applicable, be calculated as follows, providing always that the total remuneration from salary and pension does not exceed the current salary of a full-time Judge:

0.8 (full-time salary) divided by 180 = per diem rate

5. **Reimbursement of Expenses**

The Compensation Committee recommends that the Attorney General reimburse the Provincial Court Judges Association of British Columbia for expenses incurred in preparing its written submission to the Compensation Committee in March 2001, in the amount of $22,545.27; and

That, with regard to the next Judicial Compensation Committee process, parties be reimbursed by the Attorney General for costs incurred in preparing submissions or presentations to the Compensation Committee insofar as such preparatory work is in accordance with a prior framework agreement among the parties and the Compensation Committee.

6. **Judiciary Injury Reimbursement Program**

The Compensation Committee endorses the Judiciary Injury Reimbursement Program proposal, approved by the Chief Judge and the President of the Provincial Court Judges Association and by the Deputy Minister, Ministry of Attorney General, and recommends it as a program necessary to provide certain specific benefits currently not available to Judges due to their ineligibility for Workers Compensation.

Introduction

The 2001 Judicial Compensation Committee, appointed in January by the Attorney General in accordance with the *Provincial Court Act*, is an independent panel charged with reviewing, and making recommendations for the years 2001, 2002 and 2003 with respect to pay, allowances and benefits for Provincial Court Judges in British Columbia.

The Compensation Committee process, as established in 1994 under legislation passed by the British Columbia Legislature, is designed to maintain an appropriate separation of the political branches of government and the judiciary and thereby to help ensure judicial independence is maintained in the consideration of compensation for Provincial Court Judges.

In our democratic society, judicial independence is widely acknowledged as the foundation of our justice system. As the Supreme Court of Canada has clearly pointed out, a number of factors are important to the preservation of that independence, including security of tenure, administrative separation of the judiciary from the political and executive branches of government, and financial security. The task of the Compensation Committee relates specifically to the latter – financial security of the Provincial Court Judges.

In carrying out its assignment, the 2001 Compensation Committee has spent months gathering information, visiting Provincial Courts, consulting with many groups, meeting with various parties, reviewing submissions from the Government of British Columbia, the Provincial Court Judges, other organizations and members of the public, examining relative information on salary, pension and benefits and giving all of this its most careful consideration.

The Compensation Committee began its work with a strong focus on pension provisions in response to two historic factors: One, a long-standing concern among the Judges that pension provisions needed improvement and, Two, the fact that two previous Compensation Committees found the pension issue to be complex and important and worthy of further detailed study in order to bring forward appropriate recommendations.

As this report spells out in the following sections, in addition to its recommendations as to salary levels and benefits, the 2001 Compensation Committee has pursued the pension matter in considerable detail and, based on submissions from the Judges and the Government and on actuarial studies, the Compensation Committee makes specific recommendations for changes to pension provisions.

The Compensation Committee members believe it is important that readers of this report have an opportunity to review background to the process, history of the Provincial Court and significant elements of the Compensation Committee's deliberations in arriving at its conclusions.

The members of the 2001 Compensation Committee also believe it is important to note that, in contrast to a sometimes-antagonistic environment encountered by previous Compensation Committees, the constructive, non-adversarial attitude of the parties this time contributed significantly to our ability to get our job done efficiently and in a timely manner.

Section 1

Mandate & Members of the 2001 Judicial Compensation Committee

Under Section 13 of the *Provincial Court Act*, British Columbia's Judicial Compensation Committee is formed every three years to "report to the Attorney General on all matters respecting the remuneration, allowances and benefits of judges, and make recommendations with respect to those matters for the year in which the recommendations are made and for each of the two subsequent years."

The intent and broad purpose of the Compensation Committee process is to determine appropriate compensation for Provincial Court Judges through a method that upholds the principle of judicial independence. Section 13(10) of the Act requires that the Compensation Committee, in arriving at its conclusions on total compensation for Provincial Court Judges, consider the following criteria:

- The current financial position of Government,
- The need to provide reasonable compensation to Judges,
- The need to attract a strong court by attracting qualified applicants,
- The laws of British Columbia, and
- Any other matter the Committee considers relevant.

In accordance with the *Provincial Court Act*, the 2001 Judicial Compensation Committee is comprised of two representatives appointed by the Attorney General of British Columbia and two members appointed by the Chief Judge of the Provincial Court in consultation with the Provincial Court Judges Association. These four appointees then select a Compensation Committee Chair.

Members of the 2001 Compensation Committee are:

Appointed by the Chief Judge:

John Baigent, a senior labour lawyer who was Vice-Chair of the Labour Relations Department and who helped draft the Labour Relations Code.

Vince Collins, a member of the 1998 Judicial Compensation Committee and a former Deputy Minister of the Ministry of Transportation and Highways.

Appointed by the Attorney General:

Jane Morley, Q.C., a full-time mediator and arbitrator, who is a Partner in the law firm Morley & Ross.

Keith Saddlemyer, is a management consultant trained in law, economics, finance and administration. He has held a broad range of senior positions in both provincial and federal governments.

The Chair

Charles Connaghan, C.M., a management consultant and President of the firm C.J. Connaghan & Associates, who was Chief Commissioner of the B.C. Treaty Commission in 1993. He has chaired the Judicial Compensation Committee twice in the past.

Section 2

The Provincial Court

Scope of the Court

The Provincial Court of British Columbia hears criminal, family, youth and civil cases. It has a very broad responsibility. It hears all cases involving charges against young offenders, all child-protection cases, and all civil cases to a value of $10,000.

Increasingly, as amendments to the Criminal Code have expanded the Provincial Court's jurisdiction, the Provincial Court has become the court of choice to hear criminal cases. It hears more than 90% of the adult criminal cases prosecuted in British Columbia.

In family law, Provincial Court Judges hear cases concerning child custody and access, spousal and child support and enforcement of maintenance orders.

The "People's Court"

The Provincial Court has often been described as the "people's court". The name reflects the high volume of cases it hears and the fact that the Provincial Court is the only court many residents of the province will ever deal with directly. Many people appear there without lawyers to represent them and thus deal directly with the Court's Judges. This presents special challenges for the Judges who, in addition to making decisions in each case that comes before them, also are often called upon to educate people about how the justice system works.

The Provincial Court presides in more than 100 locations across British Columbia. In urban areas, court sessions are held in dedicated court facilities. In many instances, rural and more remote regions are visited by Judges who may sit for a day or two per month at a given community, using such facilities as community halls. Provincial Court Judges reside in many regions of the province and, like other residents, they are exposed and become sensitive to the realities of life in their communities, as well as to public perceptions of the justice system.

The Provincial Court has a substantial caseload. A total of 288,026 cases entered the system in fiscal 1999-2000. Each Provincial Court Judge now hears an average of some 1,100 cases per year.

In addition to the caseload itself, the complexity of the cases being heard is increased by issues raised under the *Charter of Rights and Freedoms* and under considerations related to aboriginal rights and claims. An additional challenge in the role of the Provincial Court Judges arises from the fact that, in many cases, there is no specialization of Judges. They hear any and all cases brought before them, cases covering a wide cross section of issues.

Innovation and Productivity

The Provincial Court Judges have been leaders in bringing improvements to the system of justice delivered by this Court. In the views expressed to the Compensation Committee by both the Provincial Court Judges Association and the Government of British Columbia, changes implemented by the Judges have made the Provincial Court more responsive to the needs the people before it, improved access to justice and have increased the Court's productivity by delivering efficiencies in the use of the Court's time.

Two of the most important innovations have been mandatory mediation in civil division, family and child protection cases, and new caseload-management techniques. The Provincial Court Judges and the Government have worked together to implement these improvements, demonstrating that co-operation in the pursuit of solutions to operational challenges can lead to positive results without prejudice to judicial independence.

Mediation

Mediation is a conflict resolution method in which a mediator helps two parties negotiate a voluntary solution to their dispute. Acting as mediators adds to the Judges' tasks and requires a skill set and methods quite different from those of their traditional work

The Judges submitted and the Government agreed that the success rate and the benefits of mediation are significant. The Judges Association notes that approximately half of the child-protection cases and two-thirds of the family settlement cases brought to the Provincial Court are being resolved without trials. Such successful mediation saves the court time and the expense of a trial, reduces the number of last-minute trial cancellations, and often leads to improved decisions more likely to be respected by the parties involved.

Caseload Management

There is an axiom that justice delayed is justice denied. In April 1998, then Chief Judge Metzger issued a report entitled *Delay and Backlog in the Provincial Court of British Columbia*, addressing caseload backlog and the risks undue delays can represent to the rights of the people brought before the court. The Metzger Report has led to additions to the Provincial Court resources and to the implementation of changes – supported by the Judges and the Government. The Judges Association submission shows that these steps have achieved reductions in three areas: the number of cases pending for more than 240 days, the number of administrative court appearances, and the overbooking of trials.

The Judges submitted and the Government agreed that the reforms to the system of justice in British Columbia through the Provincial Court have resulted in a more efficient court, delivering benefits to litigants, lawyers, witnesses and others involved in the court process.

Section 3

The Importance of Judicial Independence

Our form of government includes three branches – Legislative (elected Members of the Legislative Assembly); Executive (the Cabinet and civil service), and the Judiciary. It is widely acknowledged that to safeguard the freedoms of our democratic society and to maintain public confidence in the justice system, the judiciary must be independent from the other branches. The public needs to know that Judges will make their decisions based on the law, not on politically prompted bias or on who is paying their salary.

The importance of judicial independence was addressed in 1997 in a decision of the Supreme Court of Canada, known as the *Reference Case*. (*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of the Judges of the Provincial Court of Prince Edward Island* [1997] 3 S.C.R. 1)

That decision, delivered by then Chief Justice Lamer, in Paragraph 118, described three basic conditions as "core characteristics of judicial independence." These are: security of tenure, including protecting Judges from being fired for making a decision the government does not like; administrative separation from the other branches of government; and financial independence.

With respect to financial independence, Chief Justice Lamer, in Paragraph 147, had this to say:

> ***"The imperative of protecting the courts from political interference through economic manipulation requires that an independent body – a judicial compensation commission – be interposed between the judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in judicial remuneration."***

In British Columbia, the requirements set out in the Supreme Court of Canada *Reference Case* are met by the Judicial Compensation Committee process, which was approved by the Province's Legislature in 1994.

SECTION 4

History of Determining Judicial Compensation in British Columbia

The process of determining judicial remuneration in British Columbia has evolved over time. An examination of that evolution makes it clear that what now is in place reflects a broad recognition of the importance of an independent judiciary in our democratic society.

Historically, for the first decade following the creation of the Provincial Court of British Columbia in 1974, judicial remuneration was negotiated directly between the Government and the Judges. In 1986, the Government unilaterally amended the *Provincial Court Act* and created the Compensation Advisory Committee. That did not prove satisfactory to the Judges. They were not represented on the compensation committees and the committee recommendations were not always adopted by the Legislature.

1992 Recommendations on Process

By the time of the appointment of the Compensation Advisory Committee in 1992, the Government and the Judges had not been able to agree on a more satisfactory process. So the Government asked the Compensation Advisory Committee to make recommendations on both remuneration and a new process for establishing judicial remuneration. The Committee's 1992 Report on Process identified the following as among the problems with the system at that time:

- The committee was entirely appointed by the government,
- Practicing lawyers were excluded from appointment to the Advisory Committee and lay people on the Committee found it difficult to understand the constitutional principles they were required to deal with,
- The committee had no guidelines as to its procedure, and
- The committee's report was not binding.

The 1992 Advisory Committee recommended the process that is in place today, a process similar to what most other provinces in Canada now have adopted:

> A five-member committee appointed every three years with two members appointed by the Attorney General, two members appointed by the Chief Judge in consultation with the Provincial Court Judges Association, and a chair selected by those four members.

The 1992 Advisory Committee recommended two options to the legislators:

- Make subsequent Judicial Compensation Committee recommendations binding, or
- Accept the compensation recommendations unless the Legislature found them to be "unfair and unreasonable."

In 1994 the Legislature confirmed the recommended structure of the Judicial Compensation Committee and accepted the second option.

In 1993, the Government had imposed a salary freeze for anyone on the public payroll earning more than $100,000 a year. Subsequently, when the 1995 Judicial Compensation Committee recommended increases in Judges' salary levels and a reconsideration of Judges' benefits, the Legislature rejected the recommendations as "unfair and unreasonable".

Court Petitioned

The Provincial Court Judges Association of British Columbia petitioned the Supreme Court of British Columbia to overturn the Legislature's decision and, when the petition was denied, appealed to the British Columbia Court of Appeal. The Court of Appeal decision was delivered by Mr. Justice Hall in May 1998, (*Provincial Court Judges' Association of British Columbia v British Columbia (Attorney General)* (1998) 100 D.L.R. (4th) 477)

The Court of Appeal found that the Legislature had not taken the "rational approach" required in such a situation and that the Legislature's decision "did not conform to the standard set out in the legislation for rejecting, in whole or in part, a committee's recommendations". Mr. Justice Hall wrote in Paragraph 29

> *"The across the board approach adopted here leads me to conclude that what happened in 1995 was not a reasoned response to the committee recommendations but something more in the nature of a reactive decision to reject anything and everything contained in the committee recommendations, some of which, as I have noted, were of modest or no immediate financial import."*

The Court of Appeal referred the 1995 Judicial Compensation Committee's Report back to the Legislature for reconsideration.

In the end, the Legislature voted again to reject the 1995 Compensation Committee's recommendations, the result being a "freeze" on Judges' compensation that lasted some five years. As a result, compensation levels for Judges of the Provincial Court in British Columbia remained static and the impact has lingered to the present, even though the Legislature effectively ended the "freeze" when it accepted recommendations of the 1998 Judicial Compensation Committee. The 1998 Compensation Committee's report was filed while the British Columbia Court of Appeal decision was pending.

Non-Adversarial Environment

The process in the current year has been remarkably constructive and non-adversarial, with full participation by the Provincial Court Judges and the Government and the assistance of the Chief Judge's office. The Government has responded to requests quickly and co-operatively with high quality information. And the Judges Association and the Government have indicated in submissions to the Compensation Committee agreement on proposals for dealing with supernumerary judges and costs.

This noticeable change in the environment surrounding the Compensation Committee process is very positive and the 2001 Judicial Compensation Committee encourages the parties to continue in this way.

Section 5

The 2001 Judicial Compensation Committee Process

In its approach to the task assigned to it under the *Provincial Court Act*, the 2001 Judicial Compensation Committee undertook a comprehensive review of relevant information, met with Judges, Government representatives and others, and invited and received written submissions from government and legal communities and members of the public.

At the outset, it was apparent that pension provisions would be a major focus of the Compensation Committee's work. In response to comments in the report of the 1998 Compensation Committee, Towers Perrin reviewed the pension provisions for Provincial Court Judges and proposed substantive changes. With the agreement of the Provincial Court Judges Association and the Government, Western Compensation & Benefits Consultants then conducted an actuarial study to determine what the changes would cost.

After reviewing the reports of both of these pension experts, the 2001 Compensation Committee decided that further expert study and advice was required to enable recommendations to resolve this long-standing issue. Donald Smith of Western Compensation & Benefits Consultants met with the Compensation Committee on several occasions and was asked to provide further information and analysis to assist the Committee. The outcome of that work and the Compensation Committee's deliberations are described in some detail in Section 7 Provincial Court Judges' Pensions and in Appendix A (Western Compensation & Benefits Consultants Letter).

Members of the Compensation Committee also pursued first-hand knowledge of the workings of the Provincial Court. They met with the Chief Judge and Administrative Judges and spoke with other Judges and Court Administrative staff. They visited courtrooms at Robson Square and at 220 Main Street in Vancouver and the Provincial Court in Kelowna. They observed Judges conducting a variety of activities, including trials, mediation and settlement conferences.

An invitation was published in daily newspapers during March 2001 inviting written submissions from the public. A few submissions from individuals and organizations were received and reviewed by the Compensation Committee. The comments and suggestions were interesting and enlightening.

The Compensation Committee received written submissions, and for two full days heard oral submissions from representatives of the Provincial Court Judges Association of British Columbia, the British Columbia branch of the Canadian Bar Association, the Judicial Council of British Columbia, the Law Society of British Columbia, the Ministry of Attorney General and other relevant ministries and agencies of the Government of British Columbia. The information and views presented were very helpful to the Compensation Committee.

Section 6

Determining Judicial Compensation

The *Provincial Court Act*, in Section 13(10) sets out criteria to be addressed by the Compensation Committee in arriving at its conclusions and recommendations as follows:

- "The current financial position of Government"
- "The need to provide reasonable compensation to Judges"
- "The need to attract a strong court by attracting qualified applicants"
- "The laws of British Columbia" and
- "Any other matter the Committee considers relevant".

The Compensation Committee considered the applicability of each of the criteria in coming to its conclusions.

The Laws of British Columbia

Apart from the *Provincial Court Act*, the deliberations of the 2001 Judicial Compensation Committee did not rely on other *laws of British Columbia*.

The need to attract a strong court by attracting qualified applicants

Submissions received by the Compensation Committee from the Provincial Court Judges Association, the Law Society of British Columbia, the British Columbia Branch of the Canadian Bar Association and the Judicial Council of British Columbia, suggested that the salary level for Judges of the Provincial Court could be a disincentive in attracting applicants from among lawyers in private practice.

Data before the Compensation Committee, including submissions of the Law Society of British Columbia related to salary levels, show that the current salary level for a Provincial Court Judge is generally in line with salaries of lawyers in the top quartile of their profession at a stage in their career comparable to that of a Judge at the time of appointment to the Provincial Court.

The data indicates that, for some lawyers, appointment to the Provincial Court carries a financial disincentive; for most it does not. In addition, pension provisions for the Judges and security of tenure are seen to be attractive for those in the private practice of law.

Information from the Law Society of British Columbia shows that the numbers of Crown Counsel and lawyers in general practice who apply for appointment to the Provincial Court are in relative proportion to the numbers of Crown Counsel and lawyers in general practice in the province.

In its submission, the Judicial Council of British Columbia advised that about 25% of all applicants are approved for appointment to the Provincial Court. The number of applicants has been stable over the last six years, averaging 57 per year. In 2000, there were 52 applicants.

There was no indication that the Judicial Council is dissatisfied with the calibre of candidates being approved for appointment but the Council did submit that an increase in Judges' compensation might draw a larger number of candidates.

The Compensation Committee has concluded that no significant challenge currently exists in terms of attracting qualified people for appointment to the Provincial Court.

The current financial position of the government

In its submissions to the 2001 Judicial Compensation Committee, the Government of British Columbia projected a healthy financial situation for the next two fiscal years. In light of the Government's projections and the fact that the total cost of Provincial Court Judges' compensation is a relatively minor item in the provincial budget, the Compensation Committee concluded that the Government's financial position would support the increases this Compensation Committee has recommended and is not a reason to deny Provincial Court Judges a reasonable salary increase that is justifiable on other grounds. This is in contrast to the financial position of the Government at the time of the 1995 and 1998 Compensation Committee reports.

The need to provide reasonable compensation to the judges

Judges hold a unique place in our society and perform valuable work. The challenge is to define what is "reasonable compensation".

In its approach, the 2001 Judicial Compensation Committee has worked on the premise that the definition of "reasonable compensation" must include the total compensation package – salary, pension and benefits. And, as already indicated in this report, the 2001 Compensation Committee has made a significant effort to address and resolve issues related to pension provisions, a matter of concern to the Judges for many years.

The Compensation Committee has reached its conclusions only after examination and analysis of submissions from interested parties and its own pursuit of information on factors raised by the submissions. These factors included:

- The work that Judges do and the contribution Provincial Court Judges, in co-operation with the Government, have made to efficiency of the justice system in British Columbia;
- The experience and education required to qualify for appointment to the Provincial Court and what the appointees could be earning in law practice;
- The history of remuneration, including pensions and benefits, in British Columbia's Provincial Court;
- Remuneration of Federally-appointed Judges and Judges in other Provincial Courts;
- Other salary levels and general economic indicators.

1. The work that Judges do and the contribution Provincial Court Judges, in co-operation with the Government, have made to efficiency of the justice system in British Columbia

The work that Provincial Court Judges do is described in Section 2, entitled "The Provincial Court", which includes comments on the scope of the Provincial Court's jurisdiction.

Compensation should reflect the good value British Columbia Provincial Court Judges provide to the public and the public purse. That value is evident in their productivity and their efforts in implementing such innovative and effective court reforms as mediation and improved caseload management.

2. The experience and education required to qualify for appointment to the Provincial Court and what the appointees could be earning in law practice

As a starting point relative to experience and education, under the *Provincial Court Act*, the minimum requirement to become a Provincial Court Judge is five years of experience as a lawyer. Much more is, in fact, involved.

A recent survey administered by the Chief Judge's Office shows that current Judges had an average of 15.3 years of experience as a lawyer before appointment to the bench. Applicants go through a lengthy selection process where they are evaluated by their peers and by Judges, including Judges who have heard them, as lawyers, argue before them in court. The end result is the appointment of qualified and accomplished people.

The Judges of the Provincial Court in British Columbia have an average of 10.5 years of experience on the bench and an accumulated legal experience of 25.8 years.

Judicial salaries are not adjusted for judicial experience. However, the Compensation Committee notes that the salary level for Provincial Court Judges, at the time of appointment, compares favourably with lawyers of similar age and experience and the Judges enjoy pension provisions more favourable than those available to lawyers in private practice.

3. The history of remuneration, including pensions and benefits, in British Columbia's Provincial Court

The Compensation Committee has taken into account the fact that, from 1992 through 1997, the salary of Provincial Court Judges remained static at $118,402. That changed when the Legislature approved the recommendations of the 1998 Judicial Compensation Committee but the impact lingers to the present, leaving a need for "catch up" consideration.

Changes in the pension provisions for Provincial Court Judges have been advocated for at least six years but, because of a lack of necessary expert information on the subject, these have been deferred by the last two Compensation Committees.

The Legislature's approval of the 1998 Compensation Committee's recommendations resulted in salaries of $134,000 in 1998, $139,000 in 1999 and $144,000 in 2000.

4. Remuneration of Federally-appointed Judges and Judges in other Provincial Courts

Two previous Judicial Compensation Committees have accepted that salary levels for Provincial Court Judges in British Columbia should be compared with the salary levels of Federally-appointed Judges. The 1995 and 1998 Compensation Committees suggested the goal of a Provincial Court salary at 90% of those of Federally-appointed Judges but did not recommend that level because of the Government's financial constraints. The Provincial Court Judges Association submitted to this Compensation Committee that parity with the Federally-appointed courts should be the goal.

The 2001 Judicial Compensation Committee considered this matter afresh.

This Compensation Committee has not taken a position on the issue because the Committee was concerned that the implications of making this comparison have not been fully canvassed. Questions which in this Compensation Committee's view require a more detailed consideration include: Do Judges at different levels of courts, in fact, have different tasks? Is there a rational basis for the significant salary gap between the courts that has existed for many years? Is it appropriate to tie provincial expenditures to federal decisions? Are there other policy issues that should be considered?

On the other hand, the Compensation Committee believes that it is appropriate and useful to make comparisons with other provinces. It reviewed salaries of other Provincial Courts and found that the most relevant comparisons for British Columbia Provincial Court Judges are the Provincial Courts of Alberta and Ontario. Historical relationships of Provincial Court salary levels in British Columbia, Alberta and Ontario are set out in Appendix C.

In 2000, the salary of Provincial Court Judges in Alberta was $170,000 and that in Ontario was $172,210. The Ontario salary level is subject to review by that Province's Judicial Compensation Committee later this year. In Alberta, the next review is scheduled in 2003.

5. Other salary levels and general economic indicators

Salary levels in other parts of the public sector in British Columbia and trends and projections for increases pay increases in the future were reviewed as general guides to economic performance. The Compensation Committee examined Consumer Price Index changes and noted that this widely accepted indicator of changes in the cost of living and inflationary impacts showed a 3% increase in British Columbia from 1998 through 2000, compared with the average for Canada of 4.5%.

It also took into account Conference Board of Canada forecasts of an increase of 3.7% in pay for professionals in 2001 and discussions with the Business Council of British Columbia in which it was suggested that future skill shortages in certain trades and professions could put upward pressure on wages and salaries.

And it received information related to compensation levels in the public service and reviewed it, mindful of arguments presented by the Provincial Court Judges Association and the Government of British Columbia, and of the Supreme Court of Canada *Reference Case*.

Any other matter the Committee considers relevant

The Compensation Committee concluded that, in addition to recognition of the productivity and efficiencies the Judges bring to the Provincial Court of British Columbia and the need to address the "catch up" factor lingering from the five years in which salary levels remained static, it is reasonable to include a salary increase to compensate for inflation.

Section 7

Pension Considerations & Recommendations

The 2001 Judicial Compensation Committee offers its appreciation to previous Compensation Committees, the Provincial Court Judges Association, the Government of British Columbia, those who prepared two actuarial reports on Judges pensions and Donald Smith of Western Compensation & Benefits Consultants for their contributions to the Committee's search for a solution to long-standing pension issues.

The Compensation Committee was able to learn from actuarial reports prepared by Towers Perrin and by Western Compensation & Benefits Consultants, from the submissions of the Judges Association and the Government, and from reports of the two previous Compensation Committees. The additional work undertaken on behalf of the Compensation Committee by Mr. Smith was exceedingly helpful to Committee members in arriving at recommendations designed to achieve a resolution.

Background information related to Compensation Committee recommendations is set out below.

Public Service Pension Plan

Provincial Court Judges participate in the Public Service Pension Plan, the pension plan that covers employees of the Province of British Columbia. Members of that plan contribute 5.5% of their salary up to the Canada Pension Plan earnings ceiling ($38,300 in 2001) and 7% of salary over that amount. For each year of contributory service they earn a pension of 1.3% of their best five-year average salary up to the PCP earnings ceiling and 2% of their best five-year average salary over that amount. Pensionable service is limited to a maximum of 35 years, so that a 35-year contributor can expect to receive a pension which, including pension from the Canada Pension Plan, is equal to approximately 70% of the contributor's best five-year average salary.

The normal form of pension under the Public Service Pension Plan is payable for the lifetime of a plan member. If he or she wishes to provide their spouse with a survivor pension, the member's pension is actuarially reduced.

Special Provisions for Judges

Pensions for Provincial Court Judges are subject to a number of enhancements relative to other members of the Public Service Pension Plan:

- For each year of service as a Judge, a Provincial Court Judge is credited with 1.5 years of pensionable service (which results in a pension accrual rate of approximately 3% per year of service);
- Pensions for Provincial Court Judges are based on best 3-year average salary, rather than best 5-year average salary; and
- Provincial Court Judges can retire as early as age 55 with an unreduced pension provided that they have at least five years of pensionable service (3 1/3 years of service as a judge); other members of the Public Service Pension Plan must have at least 25 years of service to retire at age 55 with an unreduced pension.

Judges' Proposals

For many years, the Provincial Court Judges Association has argued that, since Judges are typically appointed in mid- to late career (the average age at appointment is age 44), their pensions are not adequate. The Association has defined adequacy as being able to receive a pension of 70% of best three-year average earnings on retirement at age 65 after 20 years of service as a Judge, with no reduction for electing a survivor pension or for the Canada Pension Plan. In particular, the Association proposed to the 1998 Committee that:

1. The normal form of pension for a married Judge be a joint life and 60% survivor pension and for a Judge with no spouse, a life pension with a 10-year guarantee;
2. The accrual of pensionable service be increased from 1.5 to 1.75 years for each year of service as a judge, and
3. The CPP offset to the pension be eliminated.

Actuarial Evaluation

The 1998 Committee recommended that an independent actuarial evaluation of the Association's proposals be carried out. Western Compensation & Benefits Consultants subsequently carried out such an evaluation on behalf of both the Government and the Provincial Court Judges Association.

Assessment of Judges' Pension Provisions

The Compensation Committee agrees that changes should be made to the provisions for Judges' pensions. As a result of various factors, such as length of service as a judge, the effect of electing a survivor pension and the CPP offset, the average retired Judge currently is receiving a pension equal to about 33% of the salary of a sitting judge.

On the other hand, Judges' pension provisions, which have an estimated cost to Government of 16.2% of Judges' salaries, are generous relative to almost any other standard.

In assessing the appropriateness of the Judges' pension provisions, the Compensation Committee reviewed the pension provisions for Judges in other provinces. This review indicated that:

- Most other provinces provide surviving spouse pensions without any reduction in the Judge's pension;
- Most other provinces do not reduce Judges' pensions or contributions to reflect the Canada Pension Plan;
- The pension accrual rate for B.C. Judges of 3% per year of service as a Judge (i.e. 2% exclusive of the CPP offset, times the 1.5 multiplier) compares favourably with other provinces; and
- The provisions relating to retirement earlier than age 65 are more favourable than most other provinces.

Pension Recommendations

The Compensation Committee recommends the following improvements to Provincial Court Judges pension provisions:

a) For Judges retiring or terminating service as a Judge after January 1, 2001, the normal form of pension for a Judge with a spouse at the time of retirement be a joint life and 60% survivor pension and for a Judge with no spouse, life pension with a 10-year guarantee. If a spouse is more than 10 years younger than the Judge, the amount of the pension should be actuarially adjusted.

b) For service as a Judge after January 1, 2001, the pension accrual rate be 3% per year without Canada Pension Plan offset and the Judges' contribution rate be 7% of their full salary.

c) Judges be allowed to accrue a pension of up to 70% of best three-year average salary, with those Judges who have accrued less than this 70% maximum but have ceased contributing having the option of resuming contributions effective January 1, 2001 and continuing to contribute until they have reached the 70% maximum.

Western Compensation & Benefits Consultants has estimated the cost of these changes to be approximately $5,063,000 in respect of past pensionable service and 4.4% of salaries in respect of future service. If the past service cost is amortized as a level percentage of Judges' salaries over the 15-year period commencing January 1, 2001, the total cost of these changes is estimated to be 6.6% of salaries, or approximately $10,200 per year per judge based on the recommended 2001 salary level of $155,000.

Other Pension Considerations

In considering the Judges' pension provisions, the Compensation Committee focused specifically on the proposals advanced by the Provincial Court Judges Association and commented on by the Government. However, in conducting the review, the Committee identified two other issues that may be worthy of further consideration:

- Whether a reduction should be applied to pensions commencing prior to age 60 or 65 to reflect the longer life expectancy; and
- Whether the recommended rate of pension accrual of 3% per year should also be applied to periods of disability (that is, periods while in receipt of long-term disability benefits) prior to age 65.

Section 8

Salary Recommendations

The Compensation Committee has concluded that, in recommending salary levels for Judges of the Provincial Court in British Columbia, several matters must be taken into account, including the obvious need to preserve judicial independence.

Others include:

- The need for a "catch up" resulting from the lingering impact of a five-year period from 1993 through 1997 when the salary level remained static,
- Increases in cost of living,
- Comparability with other provincial jurisdictions, in particular Alberta and Ontario, and
- The contribution the Judges make to the efficiency and productivity of the Provincial Court and the value of that contribution to the system of justice in British Columbia.

The Compensation Committee recommends the following salary levels:

January 1, 2001 -- $155,000

January 1, 2002 -- $158,000

January 1, 2003 -- $161,250

Section 9

Benefits and Allowances Recommendations

The Compensation Committee recommends that current benefits and allowances of Provincial Court Judges remain the same except with regard to long-term disability (LTD) benefits where the following is recommended.

Provincial Court Judges are currently covered by long-term disability benefits of 68.3% of the first $2,500 of monthly salary and 50% of monthly salary above that amount. At their current monthly salary of $12,000, Judges' long-term disability benefits are $6,457 per month, or 53.8% of their salary. The Judges have expressed concern that such a reduction in income places too great a financial burden on disabled Judges. A review of the coverage provided by other provinces indicates that a replacement level of about 70% of salary would be more appropriate.

The Judges have suggested that the present formula could provide the appropriate level of protection if the Government was to pay the present LTD premiums to the Judges in addition to their salary and the Judges, in turn, pay the premiums to the insurer. The intended effect would be to make any benefits payable to disabled Judges non-taxable and, hence, equivalent to a much higher level of taxable benefit.

However, if the LTD premiums are paid to the Judge, these amounts would be taxable to the Judges and any reduction in tax paid by disabled Judges would be more than offset by the increase in taxes paid by active judges.

The Committee recommends that the level of long-term disability benefit for Judges be increased to 70% of salary, payable until age 65. The estimated cost of this increase is 0.4% of salaries, or about $600 per year per Judge based on the recommended 2001 salary level of $155,000.

Section 10

Supernumerary Judges Proposal

The 2001 Compensation Committee endorses the provisions of the joint proposal from the Judges and the Government for a retired Judges' election to work part time (contained in Schedule 1) to the extent that those provisions relate to judicial remuneration, allowances and benefits.

The Compensation Committee recommends that the per diem rate for ad hoc Judges, and for part-time retired Judges where applicable, be calculated as follows, providing always that the total remuneration from salary and pension does not exceed the current salary of a full-time Judge:

0.8 (full-time salary) divided by 180 = per diem rate

Section 11

Reimbursement of Expenses

The 2001 Judicial Compensation Committee recognizes that certain expenses are incurred in the course of preparing submissions and presentations required in this process and recommends:

a) That the Attorney General reimburse the Provincial Court Judges Association of British Columbia for expenses incurred in preparing its written submission to the Compensation Committee in March 2001, in the amount of $22,545.27, and

b) That, with regard to future Judicial Compensation Committee processes, the parties be reimbursed by the Attorney General for costs incurred in preparing submissions or presentations to the Compensation Committee insofar as such preparatory work is in accordance with a prior framework agreement among the parties and the Compensation Committee.

Section 12

Judiciary Injury Reimbursement Program

The Compensation Committee endorses the Judiciary Injury Reimbursement Program joint proposal, approved by the Chief Judge and the President of the Provincial Court Judges Association and by the Deputy Minister, Ministry of Attorney General, and recommends it as a program necessary to provide certain specific benefits currently not available to Judges due to their ineligibility for Workers Compensation.

(See Appendix D - Judiciary Injury Reimbursement Program)

Section 13

Summary of Recommendations

- Salary increases in 2001 to $155,000 and to $158,000 in 2002 and to $161,250 in 2003.

- Pension changes: eliminate CPP offset for future service only, make contribution rate 7% on all salary, normal form of pension joint-life 60% or single-life with a 10-year guarantee to be implemented as of 2001; maximum pension accrual of 70%, and consideration by future Compensation Committees of other pension issues.

- Increase of Long-Term Disability benefits to 70% of salary.

- Compensation for supernumerary Judges.

- Reimbursement of the Provincial Court Judges Association for costs of $22,454.27 incurred in preparing its submission to the Compensation Committee in 2001 and of costs agreed to in advance for preparation of submissions and presentations to the next Compensation Committees.

- Approval of a Judiciary Injury Reimbursement Program proposal from the Judges and the Deputy Minister, Ministry of Attorney General.

All of which is respectfully submitted:

John Baigent

Jane Morley

Vince Collins

Keith Saddlemyer

Charles J. Connaghan
Chair

5649 Blenheim St.
Vancouver, B. C. V6N 1P7

phone 604 261-7335
fax 604 264-7883
email acmcg@istar.ca

Acknowledgements

The 2001 Judicial Compensation Committee has benefited from the assistance of a number of organizations and individuals in the course of its review. The Compensation Committee wishes to acknowledge and thank those involved, including:

Chief Judge Carol Baird Ellan and the members of her staff.

The Province of British Columbia, Ms. Gillian P. Wallace, Q.C., Deputy Attorney General, Mr. David Murchie, Corporate Planning Division and members of the Agencies, Boards and Commissions staff.

The Provincial Court Judges Association of British Columbia and its spokesperson Judge Robert A. Higinbotham, President; Judge J. J. Threlfall, Chair, Compensation Committee and Judge Brian Neal , Secretary.

The Provincial Court judges and the Court administrative staff who the committee met and held discussions with during the Committees visits to court locations.

Members of the general public who provided their views to the Compensation Committee.

The Law Society of British Columbia, Mr. Richard Margetts, QC President; Mr. Jim Matkin, Executive Director and Mr. Adam Whitcombe Director of Statistics and Development.

The Canadian Bar Association (British Columbia Branch) and its representative Mr. David Paul.

The Judicial Council of British Columbia and its spokespersons Professor Marilyn Callahan and Mr. John Braithwaite.

Mr. John Cook, Chair of the Public Service Pension Board of Trustees.

Members of the Compensation Committee administrative staff, Ms. Colleen McGuinness, Ms. Sarah McLean and Mr. Jim Peacock.